

The Petition requests that the Commission find the use, maintenance and improvement of the pedestrian tunnel and improvement of the access and approaches thereto, are necessary to promote the safety and convenience of the public. The Petition further requests that the Commission grant permission for the use of the tunnel, and authorize improvement to the tunnel and the approaches thereto as depicted in the engineering plans for the tunnel and approaches set out in the Petition as Exhibit B.

The Petition requests that that the Commission authorize maintenance and apportion the costs for construction of the improvements and maintenance. The Petition represents that the City will pay all costs of the improvements and maintenance of the approaches, including reimbursement to UP for any railroad operational safety measures for the construction project which are required by law.

THE LAW

Upon acquisition of the tunnel by the City, what was a private crossing not subject to Commission jurisdiction, is now a public crossing subject to Commission jurisdiction. As the tunnel is now subject to Commission jurisdiction, permission to use it as a public crossing should be addressed and terms such as responsibility for maintenance and the costs thereof should be prescribed by the Commission.

Section 18c-7401 of the Illinois Commercial Transportation Law (625 ILCS 18c) 7401, entitled Safety Requirements for Track, Facilities and Equipment, provides that “[n]o public pedestrian bridge or subway shall be constructed across the track of any rail carrier without have first secured the permission of the Commission.” “The Commission shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each such crossing.”

“The Commission shall also have power by its order to require the reconstruction, minor alteration, minor relocation or improvement of any crossing (including the necessary highway approaches thereto) of any railroad across any highway or public road, pedestrian bridge, or pedestrian subway, whether such crossing be at grade or by overhead structure or by subway, whenever the Commission finds after a hearing, or without a hearing as otherwise provided in this paragraph that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public or of the employees or passengers of such rail carrier or carriers.”

“A hearing shall not be required in those instances when the Commission enters an order confirming a written stipulation in which” the Commission, the public highway authority, and the rail carrier agree to the “reconstruction, alteration, relocation, or improvement and the subsequent maintenance thereof and the division of costs of such changes of any . . . pedestrian subway.”

In summary, the Commission may allow or deny permission for use of the tunnel, require any alterations or improvements to the tunnel, including the approaches, and may prescribe the terms of operation, maintenance and use of the crossing, and prescribe the division of costs of installation and subsequent maintenance. The Commission may do this without a hearing if the Commission, the City, and UP agree by stipulation to the improvements, responsibility for construction and future maintenance, and allocation of costs.

STIPULATION

The City, UP, and Staff of the Commission's Rail Safety Division have stipulated to the above representations, and the following factual representations, findings and ordering paragraphs. Accordingly, no hearing is required.

An existing pedestrian tunnel ("tunnel") beneath the UP's right of way is located approximately 600 feet south of Walnut Street (DOT/AAR crossing #174468M, railroad milepost 72.98) on the UP's track sometimes known as the "KD" Line. The City has acquired the real estate and improvements lying east and west of the KD Line in the vicinity of the tunnel. The tunnel was designed, built, and used by a previous owner to provide access to buildings located on either side of the KD Line, and the City has now acquired the rights to the tunnel from the prior owner.

The City is partially demolishing the building at the eastern terminus of the tunnel, improving the area with parking, and further improving a building directly west of the western terminus of the tunnel as an indoor recreation facility. The parking east of the tunnel will serve the building west of the tunnel. The tunnel will also provide access for the residential areas east of Madison Street and provide a connection to Ingersoll Centennial Park. The City has determined that it is necessary to promote the public safety and convenience of the public that the subject tunnel be maintained and that the approaches thereto be improved for access to and from the aforementioned parking areas, residential areas, and the proposed recreational building. The design includes provisions for handicap ramps, and other necessary features to meet the requirements of the federal Americans with Disabilities Act ("ADA"). No structural changes to the tunnel are proposed by the City. A copy of the engineering plans for the tunnel and approaches was attached to the City's Petition. Also attached to the petition was a structural report and more detailed description of the subject tunnel. It concludes that the tunnel is in good condition and that the portion of the tunnel supporting the track of the UP is adequate for Cooper E80 loading.

The City has coordinated its Project as herein described with the UP and Commission staff and will continue to do so. It intends on starting construction in 2015. All costs of the project, including construction and maintenance of the approaches to the tunnel, shall be paid by the City.

RESPONDENT UNION PACIFIC RAILROAD COMPANY'S POSITION

The Respondent has no objection to the City's Petition.

STAFF'S POSITION

Staff supports the Project.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, finds that:

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) Petitioner, City of Rockford, Illinois, is an Illinois municipal corporation existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent, Union Pacific Railroad Company, is a rail carrier engaged in the transportation of property by rail in the State of Illinois;
- (4) The Petitioner has filed a Petition for an order to permit the maintenance, use and improvement of an existing pedestrian tunnel under the Respondents single track approximately 600 feet south of Walnut Street (DOT/AAR #174468M, railroad milepost 72.98) and improvement of the access and approaches thereto in the City of Rockford, Illinois;
- (5) The Commission has jurisdiction over the Petitioner and the Respondent and the subject-matter of this proceeding;
- (6) The improvements to the existing pedestrian tunnel as requested by the Petitioner, are necessary to promote safety and the convenience of the public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3);
- (7) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (8) The City of Rockford shall at its sole cost and expense improve and maintain the existing pedestrian tunnel in accordance with the plans and reports included within its petition;
- (9) The City of Rockford should be responsible for all construction and maintenance costs associated with the improvements to tunnel and approaches;
- (10) The parties should proceed immediately to take the actions they are directed to perform by this Order. All work required of the parties under this Order should be completed by December 31, 2016;
- (11) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (12) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the

scheduled deadline. The Commission will decide Petitions for Supplemental Orders;

- (13) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe; and
- (14) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Rockford is authorized, in accordance with the plans incorporated into the petition to improve, use, and maintain the existing pedestrian tunnel under the Respondent's single track approximately 600 feet south of Walnut Street (DOT/AAR #174468M, railroad milepost 72.98) in the City of Rockford, Illinois. All work shall be completed by or on behalf of the City of Rockford in accordance with Findings (5) through (14).

IT IS FURTHER ORDERED that the City of Rockford shall, at six-month intervals from the date of this order until the Project has been completed, submit written reports to the Director of Processing in the Commission's Transportation Bureau (Director of Processing), describing the progress that has been made toward completing the Project. If the Project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the Project established by the Order; the type of improvement; and Project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the Project.

IT IS FURTHER ORDERED that the City of Rockford shall, within five days of the completion of the Project, file with the Director of Processing a letter advising the Commission of the completion date, along with an updated USDOT Crossing Inventory form completed in coordination with the Union Pacific Railroad Company.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____, 2015.

BRIEN SHEAHAN
CHAIRMAN